IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO: 3431 of 1994

Between:

P.S.R. Swami, S/o. Late Sri P.S. Murthy,
R/o.13, Rajaveethi, Choolaimedu, Madras 600 094.

..... PETITIONER

AND

The Central Institute of Tool Design, A-1 to A-8, A.P.I.E. Balanagar, Hyderabad 500 037. rep. by its Principal Director

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, director or order, one in the nature of a writ of mandamus directing the respondent-institute-institute herein to immediately pay the petitioner all the benefits of his voluntary retirement as per his notice of voluntary retirement dated 16.7.1992 to the respondent-institute along with interest @ 18% p.a., on the dues w.e.f. 1.8.1992 or alternatively direct the respondent-institute-institute to immediately take back the petitioner into the service as Company Secretary and pay him salary and all other consequential benefits, allowances etc. in accordance with his terms of Original appointment order w.e.f. 1.8.1992.

Counsel for the Petitioner: MR.A.SITA RAMA RAO

Counsel for the Respondent-institute: MR.A.RAJASEKHAR REDDY, SC FOR CENTRAL GOVERNMENT

The Court at the stage of admission, made the following:

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ORDER:

The petitioner worked as a Secretary in the respondent-institute. He was appointed in the year 1987 and worked in that capacity till 1992.

2. In the year 1991-92 in pursuance of a paper notification, issued by the institute, the petitioner applied for voluntary retirement scheme on 16-07-1992 after coming to know that the voluntary retirement scheme was made applicable to senior officials of the institute. In response to the application of the petitioner, dated 16-07-1992, the respondent-institute issued a memo informing the petitioner that with reference to his application dated 16-07-1992, opting for voluntary retirement, it has been accepted and he would be relieved from the service of the respondent-institute. On the same day, he received another letter dated 20-07-1992 mentioning that with regard to his opting for voluntary retirement and acceptance, the petitioner would be relieved from the service of the respondent-institute with effect from 31-07-1992 after noon and he has to hand over the charge to one K.V.Subrahmanyam, Assistant Director, Accounts and Law Officer, who will look after the duty of the Secretary with effect from 31-07-1992. Another letter was sent to the petitioner informing that his request for voluntary retirement was put up to the governing council and it was resolved that no benefits are payable to the petitioner and there is no voluntary retirement scheme in existence and he was directed to repay two and half months salary for the notice period and also the balance amount of conveyance allowance of Rs.7,009/- with interest. When the petitioner made an application on 07-01-1993 for extra-ordinary leave from 01-08-1992 to 27-02-1993, respondent-institute gave a letter on 20-03-1993 to the petitioner informing that his request to join

the services of the respondent-institute has not been agreed to, as his resignation was accepted and he was relieved from the services of the respondent-institute with effect from 31-07-1992. It was further mentioned that the petitioner is eligible for the benefits for which the resigned employees of the respondent-institute are eligible. Subsequently, the petitioner gave a notice to the respondent-institute requesting to take him into service within 15 days, otherwise he will be constrained to take further steps. After giving legal notice to the respondent-institute, no orders have been passed by the respondent-institute. Therefore, the petitioner approached this Court through this writ petition, seeking a direction to the respondent-institute to immediately pay the petitioner all the benefits of his voluntary retirement, dated 16-07-1992, or to take him back to service as Company Secretary.

3. The respondent-institute through its counter contended that the petitioner had total service of five years three months only by the date of his application. The age of the petitioner by the date he was relieved from duty was only 46 years 9 months. No voluntary retirement scheme has been specifically approved by the governing council of the respondent-institute on 09-03-1992. Therefore, the voluntary retirement scheme is not applicable to the petitioner. The respondent-institute further contended that the Government contemplated voluntary retirement scheme for the persons who have put in ten years of service or attained the age of 50 years.

4. From the counter of the respondent-institute, it is clear that petitioner is not eligible for taking voluntary retirement. But the respondent-institute accepted his voluntary retirement without eligibility. Had the petitioner not been eligible for voluntary retirement, his application ought to have been rejected by mentioning that he is not eligible for voluntary retirement scheme, instead of that, the respondent-institute having accepted the application resorted to resile from the earlier stand and treated the letter of the petitioner for voluntary retirement as the resignation letter and he was communicated to the effect that his

resignation letter was accepted. The employee who entered into service is entitled to continue in service till he attains the age of superannuation or till he is removed from service in pursuance of a disciplinary action by way of penalty. Though there is no such situation prevailed in the present case, the respondent-institute resorted to discharge the petitioner from service by treating his application for voluntary retirement as a resignation letter without giving him any opportunity in that regard.

5. After carefully going through the record, it is noticed that the impugned order of the respondent-institute dated 20-03-1995 was issued in a casual manner and unmindful in treating the letter for voluntary retirement as a resignation letter and denying the legitimate right of the petitioner to continue in service till he attains the age of superannuation. Therefore, the letter dated 20-03-1993 issued by the respondent-institute is not sustainable under law and it is quashed.

6. So far as the request of the petitioner for voluntary retirement is concerned, he did not fulfill the requirements for getting the benefits of voluntary retirement scheme. Therefore, his request for the benefits of voluntary retirement scheme cannot be extended to him. Since it was held that the order of the respondent-institute dated 20-03-1993 as invalid, the petitioner is entitled to reinstatement into service by treating that there was no resignation from the petitioner and that he continues to be in service. Since the petitioner remained out of service all these years and as it is represented by the learned counsel for the petitioner that the petitioner is working in another organization, he is not entitled for the wages, but he is entitled to get the period i.e., from the date of discharge from service till the date of his employment in another organization, as continuous service without wages for the purpose of computation of the retirement and pensionery benefits.

7. Writ Petition is accordingly allowed. No order as to costs.

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September 7,2004

KVR

To

1 The Central Institute of Tool Design, A-1 to A-8, A.P.I.E.

Balanagar, Hyderabad 500 037. rep. by its Principal Director

2 Two C.D.Copies.